IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 253 OF 2005

IN

STAMP NUMBER MAIN NO. 3003 OF 2005

SHRI INACIO LOURENCO, ST.CRUZ,GOA. ....Applicant

Versus

MR. OSCAR D'SOUZA, MAPUSA GOA. ....Respondent

Mr. Marvin D'Souza, Advocate for the applicant.

Mr. Esperdiao Dias Do Rosario, Advocate for the respondent.

Coram:- N. A. BRITTO, J.

Date:- 16th March, 2006

P.C.

Heard Shri Marvin D' Souza, the learned Advocate on behalf of the Complainant and Shri E. Dias, the learned Advocate on behalf of the respondent/accused.

2. The applicant/Complainant, has sought leave to appeal against the acquittal of the respondent/accused under Section 138 of the Negotiable Instruments Act, 1881, by Order of the learned C.J.M., Panaji, dated 29.10.2005, in P.C.C. No. 201/0A/1997.

3. The learned C.J.M., has come to the conclusion that the Complainant could not have filed the suit for recovery of the amount due

on the cheque dated 13.08.1997 because the same was issued towards payment of a debt, which was time barred. Shri E. Dias, the learned Counsel on behalf of the respondent/accused has brought to my notice that the allegation of the Complainant was that an amount of Rs.4,00,000/- was given to the accused in January or February of the year 1994, as admitted by him in his cross examination and being so, a cheque which was issued on 13.08.1997, was in respect of a debt which was clearly time barred and, therefore, there was no enforceable liability which could be enforced under Section 138 of the Act. Shri M. D' Souza, has brought to my notice that there was an agreement between the parties dated 04.01.1995, regarding which, another sum of Rs.4,00,000/- was advanced by the Complainant to the accused and if the said agreement is taken into consideration, then the debt payable by the accused was not time barred. On 19.01.2006, on behalf of the Complainant, a statement was made before this Court, that the complaint was filed in respect of Rs.1,00,000/- due on the said cheque dated 13.08.1997, and the balance amount of Rs.3,00,000/-, which the accused owed the Complainanant in the process of pursuing the said Private Criminal case, got time barred. A perusal of the evidence of the Complainant shows that the suit cheque dated 13.08.1997, does not relate to the agreement dated 04.01.1995 between the Complainant, the accused and one Patricio D' Souza. As far as this agreement dated 04.01.1995 is concerned, it is clear that the Complainant had stated in unequivocal terms that the Complainant's contribution under the said agreement was Rs.4,00,000/- and in relation to it, the said Patricio D' Souza, had filed a case, which had ended in conviction. Being so, it is obvious that the cheque dated 13.08.1997, had nothing to do with the agreement dated 04.01.1995 between the parties but was issued in repayment of the debt which the accused was liable to pay to the Complainant in terms of the loan of Rs.4,00,000/- advanced by the Complainant to the accused in January or February, 1994. Being so, in my view, the conclusion arrived at by the learned C.J.M., could not be faulted.

4. The said cheque was issued by the Complainant after the debt owed by the accused to the Complainant was clearly time barred and, therefore, it could not be said that the accused had any enforceable liability towards the Complainant. This is not a fit case to grant leave to appeal. Application, therefore, is hereby rejected.

N. A. BRITTO, J.

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